

# **THE INTRACTABLE IMMIGRATION CRISIS**

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## **INTRODUCTION**

The Sacramento County Sheriff's Department is one of the largest Sheriff's Departments in America. We have over 1300 full-time deputy sheriffs, and a constituency of over 1.4 million persons, covering 1,000 square miles. Unlike most counties, the largest population center in Sacramento County is in its unincorporated portion, with a population of almost 600,000 ranging from rural and suburban, to densely populated urban areas. We operate two large jails, with an average daily population (ADP) of about 4,500 inmates. Since one of our jails is next door to the federal courthouse, we house federal and ICE inmates under contract.

I have worked my entire adult career in the Sheriff's Department, starting in corrections in 1989, and elected Sheriff in 2010. I have a bachelor's degree in criminal justice, and a juris doctor (law) degree. During my entire career, both historically and currently, we have enjoyed a particularly positive relationship with our federal partners, including legacy INS and ICE.

## **THE PROBLEM**

The problem with the current immigration policy can be simply stated as there is NO coherent, sustainable immigration policy. Worse than that, there is anti-policy (an unwillingness to support even current promulgated policy or challenge contrary policies), and each State has their own policy and laws on immigration.

Sacramento is extremely diverse demographically, with a large population of undocumented immigrants. Additionally, California is home to an estimated 24% of ALL undocumented immigrants. The vast majority are law abiding and hard working men, women and families who want nothing more than to live the American Dream. I want that for them also. Further, our State and National economies are dependent on this population in many respects. That being said, there is a segment in every population—including the undocumented population—that will choose crime, drugs, violence, and gangs as a way of life. Worse yet, in many instances they victimize other

undocumented persons because they know that their victims are often too afraid to call police for help because of their uncertain and ever-changing place in our communities.

I and most other public safety leaders in California have no interest in enforcing immigration law. Our focus is keeping communities safe and ensuring that the entire community (including our undocumented population) is protected and willing to call us if they need help. Of course, that presupposes that there are people or entities that ARE concerned with enforcing immigration law. That are interested in protecting our communities from dangerous undocumented immigrants. That are adequately identifying them, detaining them when necessary, and removing criminals that the rest of my community needs to be protected from. None of that is happening to any satisfactory degree.

### **Inadequate Identification**

Law enforcement has no confidence in the identification presented by someone in this country illegally. Most of the criminal element of this population have many aliases, and simply change their name at will. In a reasonable world, every single undocumented person would be adequately identified at arrest, be linked to his or her own criminal past, and be held accountable for their current transgressions. That is what happens with U.S. citizens, but not for those who are not citizens. That was the purpose of Secure Communities; persons in this country would be identified **before** being released from custody, and theoretically held accountable for their crimes, warrants, and criminal past.

Further, for those states that issue **driver's licenses** (including California), they are mostly predicated on forged birth certificates or inadequate documentation. In fact, in California an undocumented immigrant needs NO government documentation; he or she only needs to interview with a DMV employee who can "verify" their identity. Further, most if not all state DMV's do NOT share any identification or data with ICE.

Thus, law enforcement has little idea and no confidence who they are dealing with. The level of desperation a suspect feels because of his past *he* knows about will not be known by the officer. An encounter which is casual by the officer's standard can be one of utter desperation and potential violence on the part of the suspect, and the officer would have no way to know. This is exactly what happened to my deputy Danny Oliver a few months ago, who was shot and killed during a "casual encounter" with a

four-times removed suspect operating under an alias. He simply continued to escape consequence for each of his prior illegal entries.

Law enforcement across this country does not have access to ICE databases in the field to give them critical information for their own safety.

### **THE FALLACY OF THE ‘PRIORITY ENFORCEMENT PROGRAM’ (PEP)**

Secure Communities, until it was repealed with the November 20, 2014 Executive Memo, was designed to identify each undocumented person prior to their release from custody, by allowing ICE to serve detainers on local jails to hold those who were arrested for new crimes in custody for “no more than 48 hours,” if there was reason to believe they were in the country illegally. This resulted in identifying and removing many criminals that had extensive criminal and violent histories. Presumably, the current administration felt that this cast too broad a net and repealed Secure Communities in favor of the Priority Enforcement Program (PEP), or “Secure Communities *lite*”. Under PEP, only the top priority undocumented persons are targeted for removal. Unfortunately, prior removal, multiple felony arrests, youths with extensive gang activity, misdemeanor convictions, and many felony convictions (as long as they aren’t ‘aggravated felonies’) won’t get you in the first priority. This coupled with many states’ rush to reduce felonies to misdemeanors<sup>1</sup> means that many undocumented criminals do not even rise to the level of concern or care for the federal government and its law enforcement agencies. Further, even those in the first priority that are targeted for removal are often released pending their court proceedings, and escape their fate altogether.

Now let me demonstrate why even PEP is not working

### **DETAINERS vs. “REQUESTS”**

The success of either Secure Communities or the watered down Priority Enforcement Program is absolutely dependent upon ICE being able to adequately identify each undocumented person who is arrested to determine which priority they fall under. As such, both programs have local jails submitting fingerprints to ICE, which in turn gives their agents definitive information on which they can act. In the past, they relied on ICE

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<sup>1</sup> E.g. California’s Proposition 47 which reduced many felonies to misdemeanors, including commercial burglary, theft of most guns, most identify theft, “purse snatching”, shoplifting regardless of number of priors, etc.

detainers when necessary to have the local jails hold the undocumented arrestee for “no more than 48 hours” so ICE could determine with accuracy who the arrestee is and whether further action would be appropriate.

However, many states asserted that the mandatory language of detainer law is merely a “request” and not a legal demand. Several years ago, the federal government asserted this law was mandatory. For the last couple years, the federal government refused to take a position, and recently have agreed with advocacy groups that the detainer is merely a request. Thus, arrestees are not being kept in custody long enough to determine their proper identity and whether they qualify for removal or further action by ICE. While their newer “Request for Notification” may be effective for most *sentenced* inmates with a certain release date, those that are arrested on fresh charges who get citation releases, who are released on their own recognizance, who bail out, or who get released from court are NOT subject to such requests for notification because they are getting out too quickly and without enough advance notice to ICE. According to ICE officials, in-custody arrests are down 95% from just a year ago. That means that the overwhelming majority of undocumented persons who are arrested are released right back into the community without any review or action by ICE, *regardless of which ‘priority’ they fall under.* Once back in the community, ICE can either choose to utilize precious resources to go find them again, or simply allow the cycle to continue.

## **WHO IS MAKING POLICY?**

### **State Action Challenges**

As mentioned previously, the federal government—specifically the Executive Branch—deliberately chooses not to challenge any erosion of the immigration framework. As a result, there are 50 different immigration laws in effect in this country. Fundamentally, the states have no authority to promulgate immigration law; it is a plenary function of the United States government under the Constitution. The Supremacy Clause ensures that jurisdiction for wholly federal questions resides squarely and exclusively with the federal government. Yet, the federal government challenges none, and simply allows the States to issue new and ever-changing edicts. This lack of challenge by the federal government not only fosters 50 different immigration laws, but also emboldens States and organizations like the ACLU—who believe nobody should be incarcerated OR deported—to craft policy and use the courts to establish new restrictions, confident that they will get no challenge from the federal government.

## **Court Challenges**

The ACLU continues to sue local jails, municipalities, and law enforcement agencies all over the country on a variety of immigration-related issues. They are currently suing us over immigration issues. A case of note from a lower court out of little Clackamas County, Oregon invalidated detainers as amounting to a detention without probable cause. This case was brought by the ACLU. This case is not mandatory law on any other jurisdiction than Clackamas County, yet it had every other Sheriff (because they run corrections) in the country watching what the federal government would do to challenge that decision; to defend the supremacy of the federal government. Their response was nothing. They by deliberate decision did not challenge that court decision, which had the effect of causing every other Sheriff in the country to have to make a painful decision to NOT cooperate with ICE and detainers in any way. As a result, I and most other California sheriffs now do not honor ANY ICE detainers for any reason, because ICE is not allowed to stand with us against any challenge. The result is that almost all undocumented persons that are arrested are released without any scrutiny from ICE at all. Thus, the ACLU has affected national immigration policy with one successful court decision in Oregon, and will continue to do so as long as they are able find jurists willing to engage in judicial activism to effectively change the law, without fear of federal challenge<sup>2</sup>.

Immigration law, and necessarily the safety of this country, is eroding at an unprecedented rate and the federal government is a spectator at best, and a willing participant at worst.

## **THE PROBLEM WILL CONTINUE TO GET WORSE, UNLESS...**

- Unless the federal government is willing to challenge actions of the ACLU—who believes that NOBODY should be incarcerated or deported—and advocacy groups, then immigration policy will continue to be established, modified, and promulgated by these groups and not, as it should, by a federal government that exhibits leadership and political courage, despite the possibility that they may receive criticism or lost votes from certain groups.
- Unless the federal government stops capitulating on whether an immigration detainer is a federal law or only a request, the overwhelming majority of deportable aliens will continue to escape both incarceration and removal.

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<sup>2</sup> Contrast the federal government's unwillingness to engage in this legal challenge with how fast an appeal was filed for the recent Injunction issued on the President's executive action.

- Unless the federal government is willing to challenge the 50 States' constantly evolving immigration laws and policies by asserting their federal supremacy over the immigration issue, we continue to grow further from a resolution on the immigration crisis and people remain at risk. Of course, this will require the federal government to come up with a plan of their own.
- Unless the Executive Branch by policy and practice is willing to take consistent enforcement action, and request or demand information from DMV's, and local, state, federal and tribal law enforcement agencies, *communities* will continue to be at greater and greater risk. And as long as ICE is unwilling to share status data and criminal history with local law enforcement agencies, *officers* will continue to be at grave risk.
- Unless the federal law enforcement agencies are allowed to stand with their law enforcement partners, local law enforcement agencies will be relegated to standing alone in whatever political winds are blowing in their State or community. As such, they too will become vehicles of the ACLU and other groups on these issues.
- Unless these policies change, we will continue to be an attractive destination for anyone who wishes to enter our country illegally, and we should expect increased numbers of illegal entrances.
- And Unless the federal government changes their posture of turning the other way to illegal immigration, the chances that terroristic elements entering and remaining in our country without record seems a logical certainty.

I remain deeply committed to assisting in this national effort in whatever way I possibly can. Thank you for your time.